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Supreme Court, U.S.
FILED
MAY 29 1992
OFFICE OF THE CLERK

No. 91-1767

In the Supreme Court of the United States

OCTOBER TERM, 1991

JEAN PIERRE DEANDINO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order dismissing an indictment on the ground that it failed to charge an offense.

1. Petitioner was indicted by a grand jury sitting in the Western District of Kentucky. The indictment charged him with knowingly and willfully transmitting, in interstate commerce, a communication containing a threat to injure a named person, in violation of 18 U.S.C. 875(c). The indictment specified that petitioner in his communication stated that he was "going to blow [the victim's] brains out" and that the victim was "going to die." Petitioner moved to dismiss the indictment because it did not allege that petitioner had a specific intent to threaten, and therefore failed to charge all the elements of the crime.

The district court dismissed the indictment. Pet. App. Mem. Op. 12-19. The court held that 18 U.S.C. 875(c) "defines a specific intent crime," and that an indictment charging this crime "must charge that the defendant knowingly and willfully threatened or intended to threaten." The court concluded that the indictment was insufficient because it "charges only that the defendant knowingly and willfully transmitted a communication containing a threat." Pet. App. Mem. Op. 16-17.

The court of appeals reversed. Pet. App. 1-7. The court held that Section 875(c) requires only general intent, not specific intent. Accordingly, the court ruled that the district court erred in finding that the indictment must charge that the defendant "knowingly and willfully threatened or intended to threaten."

2. Petitioner contends (Pet. 7-11) that the indictment is defective because 18 U.S.C. 875(c) requires the prosecution to prove that the defendant had the specific intent to threaten another when he transmitted a communication in interstate commerce. Whatever the merits of petitioner's contention, it is not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to dismiss. If petitioner is acquitted following a trial on the merits, his contention will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contention to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by

this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

MAY 1992

* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.